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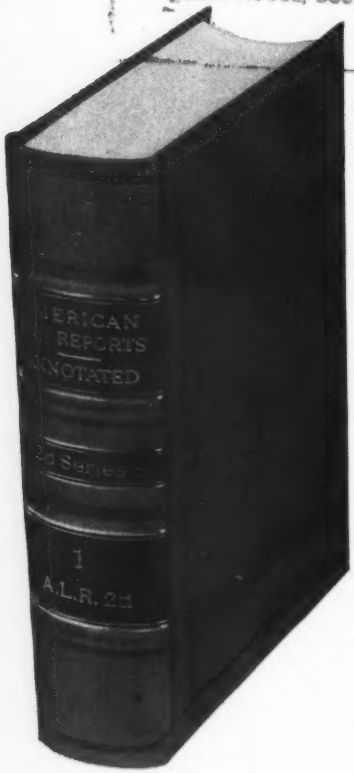

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The Bible of Democracy

by JUDGE WALTER B. JONES
Montgomery, Alabama

Condensed from
The Alabama Lawyer, July, 1949

THE Continental Congress had, on June 8, 1776, appointed a committee of five, with Jefferson as chairman, to draw up a Declaration of Independence. The other members of the Committee were Adams, Franklin, Sherman and Livingston.

Which of these five great men would write the great document? Some said Franklin, who snatched the thunderbolts from heaven, and the sceptre from tyrants, but Franklin was old and a solemn state document, which the Declaration must be, was not the kind of writing that he was best fitted for. Someone, recalling Franklin's gentle humor, said if Franklin wrote the Declaration he would put a joke in it. Some said John Adams, a Father of Independence, should write it. But he was a skilled dialectician and coldly intellectual. No doubt he would write a well-reasoned argument, but people doubted that it would be the simple expression of the popular feeling on the subject of American Independence.

John Adams wanted Jefferson to write it, telling Jefferson: "You are a Virginian, and a Virginian ought to appear at the head of this business. And you can write ten times better than I can."

So the authorship of what has been aptly called the Bible of Democracy fell to Thomas Jefferson. He devoted three weeks to composing this great state paper, presenting it to the Continental Congress on July 1, after Jefferson's four colleagues on the committee had made a few immaterial corrections.

As we look back on those historic days, we seem to hear again the voice of that great statesman and scientist, Benjamin Franklin, gathering with unanswerable reasoning all the causes for a separation from Great Britain into the one incontrovertible argument that "Taxation without representation is tyranny."

We seem to be standing in old Christ's Church near Richmond, where the Virginia Legislature was in session, and to be hearing again Patrick Henry delivering that deathless philippic so familiar to every schoolboy: "What

is it gentlemen wish? What would they have? Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it Almighty God! I know not what course others may take but as for me, give me liberty or give me death."

Other pictures and other voices throng our minds and we seem to hear again the voice of the gallant Parker on Lexington Green: "Don't fire unless fired upon, but if they mean to have a fight let it commence here!"

We seem to be members of the Green Mountain Boys as they attack Fort Ticonderoga, and we hear that brave and bold Ethan Allen demanding its instant surrender. "By what authority," asks the frightened British commander. "In the name of the great Jehovah, and by the authority of the Continental Congress!" thunders back the valiant Colonial colonel.

Again in our mind's eye we see that strong patriot, John Stark, leading an almost hopeless assault upon the outposts of the enemy, his clarion voice sounding like a trumpet above the roar of the battle. "Boys, there are the Redcoats. We must beat them today or Mollie Stark is a widow!"

In our imagination we hear again the voice of Nathan Hale as he stands upon the gallows, and yields up his noble young life, a sweet libation in liberty's cause: "Would to God that I had a dozen lives to give my country!"

And now we look far out on the turbulent waters of the raging seas and we see the gallant John Paul Jones, his brave ship shot to pieces, but refusing to surrender. "Have you struck your colors?" flags his opponent. "No," was the courageous response: "I have just begun to fight."

We recall the loyalty and devotion of the patriot fathers as they commenced war with the strongest military power on the face of all the earth. With no trained army, with but a handful of militia, with no navy, and with no credit, but with unfaltering faith in the righteousness of their cause, they bravely appealed from the cruel decrees of an arbitrary and tyrannous monarch to the just judgments of the "Great God of Battles."

Liberty triumphed, and for more than a century and a half the government of the United States has weathered the shock of internal and foreign wars, as well as the vicissitudes of peace; and despite opposition and treachery, and false lights on the shore, this Republic of the people and for the people, freighted with the hopes of the oppressed and down-trodden, still sails on in majesty and power.

The great duty which lies before the people of America today is the duty to maintain a constant vigilance lest the great principles of human liberty and

freedom, first embodied in the Declaration of Independence, and now an essential part of the Constitution of the United States, perish.

It is written by the hand of Almighty God on the eternal tablets of Time, as the first verse of the first chapter in the first book of human history, that a nation ceases to be free, that a people cease to enjoy the blessings of liberty and self-government, the moment that nation or people cease to concern themselves intelligently, patiently and courageously with all the affairs of their government.

As human blood is necessary to the existence of human life, so is the patriotic interest of a free people in their public affairs indispensable to the existence of such a great republic as today blesses the North American Continent and holds the golden torch of liberty before the eyes of the oppressed and enslaved peoples of the world.

The Promethean spark that gives life to a republic is the interest of a free people in all governmental activities. The grisly Terror that takes the breath of life from the nostrils of a republic is the failure of the people to longer participate with wisdom and courage in the public concerns of their government.

Let us always remember that our country stands for the preservation of the religious liberties of our people, for freedom of speech, for freedom of the press, for the right of the people to peacefully assemble and petition their government for a redress of grievances, for the right of the people to be free in their persons, houses and papers against unreasonable searches and seizures, for the right of trial by jury, and the right to be confronted with the witnesses against us, and for the right to own and enjoy property.

If we are to live in the spirit of the Revolutionary Patriots we need today men and women who will keep their feet on the ground, think clearly, and have the courage to stand up and battle for the convictions that God Almighty has given them. There is a great need today for a restoration of all the functions of government to the people. There is a tendency, unfortunately an increasing one, to remove from the control and guidance of the people important and essential parts of our government. We must constantly fight to restore every branch and department of our government back into the hands of the people.

It has always been necessary for people to take an active interest in their public affairs if they would have decent government. But today, as never before in the long history of our country, it is necessary that good men and women concern themselves more and more with the affairs that relate to the people at large.

There are many reasons for

the necessity of this increased interest in public matters on the part of the citizens of America.

First of all, our government, said by the great Phillips Brooks to be "the last great experiment for God's wandering humanity on earth," is going through the fires of a fierce and powerful opposition.

In many parts of the world it is daily proclaimed by strong and vigorous voices, supported by the great military power, that the doom of democracy is at hand; that people are foolish to believe that men and women are fit to be trusted with political power; and that democratic republics have no reason for existing among the governments of the world.

We are told that the best government is a totalitarian one, like Stalin's Russia; that Communism is better than Democracy.

Government by the people, of the people, and for the people, the American ideal established by the Revolutionary Fathers and maintained through the fateful years by a long line of great warriors and statesmen and God-fearing men and women, is on trial today.

You and I, the average man and woman, must be the witnesses to the goodness and usefulness of our republic.

We must love it so, and the ideals for which it stands, that our continued interest in its welfare will keep throbbing in its veins that life blood which alone can make it strong and enduring, and that life blood is our unselfish interest in everything that pertains to the welfare of our people and government.

Our great duty is to live for our Country and it seems to me that duty has never been more beautifully stated than in the words of an English Scout Master. In order to give you the nobility and patriotism of that message, I ask you to go back with me in imagination to the blood-red fields of France during that terrible struggle which convulsed the world during World War I, a struggle in which millions of lives were given up, and kings' ransoms poured forth in order that Justice, Honor, and Decency might yet live to bless the nations of the world.

I seem to see a burying squad slowly making its way over the battlefield on its mission of mercy. Presently they come upon the body of a gallant young English lieutenant, dead on the field of honor for his King and his God. Bending over him they search for something which may identify him and tell his name and his military company, and, as the corporal of the burial squad goes through the pockets of the dead soldier, he finds a letter addressed to a troop of Boy Scouts in England, the troop of which the young officer had been scoutmaster.

And this was the letter:

"I am leaving just this last brief message for you in case it be God's will that I too 'shall lay down my life for my friends.' I face the future with all faith, and courage and hope, for it is but a little thing to die for one's country. The great thing and the noblest thing any man can do, is to live for his country! During the six years or so that I have been your scoutmaster and teacher, I have tried to teach you this great truth, and if you do love me, as I believe you do, one and all, you will honor my memory by living true to that grand and glorious scout law of ours. My last word to you, boys, is, 'Live for England, to make her a purer, a nobler, a manlier, and a more Christian nation'—if you will do this, you will have done something far greater than dying for her."

This letter, one of the most pathetic pieces of literature which came out of that tragic struggle, sums up in a few simple and eloquent words the supreme duty that lies before the youth, the young men and women of America today, the duty not to die for America (for it is only a few heroic souls in every generation who are called upon to die for their country)—but the higher duty, often the harder duty, the duty to live for America every day in the year, to live to make her a nobler and manlier nation.

Privileged Report

This criticism of an act formed the basis of the libel suit in the case of Cherry v. Des Moines Leader, 114 Iowa 298, 86 N. W. 323, 54 L. R. A. 855, 89 Am St. Rep. 365:

"Effie is an old jade of fifty summers, Jessie a frisky filly of forty, and Addie, the flower of the family, a capering monstrosity of thirty-five. Their long, skinny arms, equipped with talons at the extremities, swung mechanically, and anon waved frantically at the suffering audience. The mouths of their rancid features opened like caverns, and sounds like the wailing of damned souls issued therefrom. They pranced around the stage with a motion that suggested a cross between the danse du ventre and fox trot—strange creatures, with painted faces and hideous mien. Effie is spavined, Addie is spring-halt, and Jessie, the only one who showed her stockings, has legs with calves as classy in their outlines as the curves of a broom handle."

Note: After all of the evidence was in, the trial court directed a verdict for the defendant and the Supreme Court of Iowa, pointing out that the trial court had witnessed a repetition of some of the performances given by the plaintiff, found no error in such ruling.

Contributor: Lillian S. Selcer
New Orleans, La.

Betting Debts in England

HILL v. HILL

[*Condensed from* Opinion in House of Lords, London Times, July 30, 1949]

Before the LORD CHANCELLOR, LORD SIMON, LORD GREENE, LORD NORMAND, LORD OAKSEY, LORD MACDERMOTT, *and* LORD RADCLIFFE

The HOUSE, by a majority of four to three (Lord Simon, Lord Greene, Lord Normand, and Lord MacDermott; the Lord Chancellor (Lord Jowitt), Lord Oaksey, and Lord Radcliffe dissenting), allowed the appeal of the defendant, Mr. Tom Hill, of Ye Olde Chequers Inne, Cutnall Green, near Droitwich, from the decision of the Court of Appeal affirming the judgment of Mr. Justice Hallett in favour of the plaintiffs, William Hill (Park Lane), Limited.

The question for decision was whether Hyams v. Stuart King (24 *The Times* LR, 675; [1908] 2 KB 696) remained good law, and whether payments which the appellant had contracted to make in consideration of the respondents refraining from reporting him to Tattersalls' Committee constituted an agreement to pay "a sum of money alleged to be won upon a wager" within the meaning of section 18 of the Gaming Act, 1845, and therefore irrecoverable by action.

JUDGMENT

The LORD CHANCELLOR, in the course of his dissenting opinion, said that the appellant some time before July, 1946, had had betting transactions with the respondents, William Hill (Park Lane), Limited, as a result of which he had lost in bets the sum of £3,835 12s. 6d. He did not pay, and the case was reported to the committee of Tattersalls by the respondents. That committee decided on July 22, 1946, that £3,635 12s. 6d. was due from the appellant, and that that sum ought to be paid by a payment of £635 12s. 6d. within 14 days and the remaining £3,000 by monthly instalments of £100. The discrepancy between the sum of £3,835 12s. 6d. and £3,635 12s. 6d. was due to the fact that £200 of the larger sum had been lost in betting on dog races, over which the committee of Tattersalls had no concern.

It was clear that that decision of Tattersalls did not create any obligation enforceable at law; all that that committee had done was to fix the amount of the wagers due in respect of horse racing and to give a decision as

to the manner in which it would be proper for the appellant to discharge the amount so fixed. If the appellant were to fail to pay in accordance with the decision of the committee of Tattersalls, it might have entailed consequences which would have been unpleasant for him; for, at the request of the respondents, Tattersalls' Committee would have reported his failure to the stewards of the Jockey Club and the appellant would have been warned off Newmarket Heath and his name would have been posted as a defaulter.

Counsel on both sides disclaimed the idea that the respondents would have been acting harshly or improperly had they decided to report the appellant if he failed to carry out the decision of Tattersalls' Committee. The threat so to act would no doubt have been intended to bring pressure on the appellant to pay; but the cause for so acting would have been so eminently reasonable and proper that he (his Lordship) could not think that any question of blackmail arose, and he agreed with the submission that counsel on both sides made to the House on that point. The appellant did not pay the £635 12s. 6d. within the 14 days of July 22, 1946, and letters then passed between the parties. On August 15, 1946, the appellant wrote to the respondents:

. . . The best I can do at the moment is to send you a post-dated cheque for October 10 for £635 12s. 6d. and the rest as agreed by Tattersalls.

The respondents replied on August 17, 1946:

. . . We note your suggestion that you are prepared to forward to us a cheque for £635 12s. 6d. post-dated to October 10, 1946, the balance of our account of £3,200 to be paid in monthly instalments of £100 a month as adjudicated by the committee of Tattersalls. We agree to your suggestion, and in consideration of your producing your cheque for £635 12s. 6d. post-dated to October 10, 1946, and of the said cheque being honoured by the bank, and in further consideration of the balance of our account of £3,200 being paid by instalments of £100 commencing November, 1946, and each subsequent month thereafter until our account is clear, we on our part will refrain from enforcing the order made by Tattersalls' Committee on July 22, 1946.

The appellant replied on August 20, 1946:

With reference to your letter of the 17th instant *re* account £3,835 12s. 6d., I am enclosing cheque for £635 12s. 6d. post-dated to October 10 as agreed with instalments of £100 per month commencing in November to follow, thanking you for your helpful consideration in this matter and assuring you that as soon as my financial position improves I shall do all I possibly can to settle this account as soon as possible.

The letter of August 17, 1946, was an offer from the respondents, which the appellants accepted in the letter of August 20, 1946, with the result that a contract was concluded in the terms of those letters. So long as payment was made in accordance with that contract the re-

spondents were precluded from "enforcing the order made by Tattersalls."

The post-dated cheque due on October 10, 1946, was not honoured. The first payment which was made was an amount of £335 12s. 6d. on October 19, 1946, and the respondents accepted it without prejudice to their rights under the contract. The appellant had made no further payment down to the date of the writ, by which the respondents claimed £700 as due under the agreement down to the date of the issue of the writ.

The only question which fell for decision was whether the contract concluded by the letters of August 17 and 20 was enforceable at law. It was agreed by counsel on both sides that the contract so made was a genuine contract; that it was made for good consideration; that it was not merely a colourable desire to obtain payment of a bet; and that it was not a contract "by way of gaming or wagering."

It was no doubt true that the contract arose out of a wager. If there had been no wager and no money lost as a result of that wager such a contract would never have been concluded. But long before that contract was concluded the last transaction by way of gaming and wagering had taken place and the event on which the wager depended had been ascertained. Such a contract was therefore unquestionably valid and enforceable unless there was some statutory provision which rendered it unenforceable. Such a statutory prohibition was to be found, if at all, in section 18 of the Gaming Act, 1845:—

> All contracts or agreements, whether by parol or in writing, by way of gaming or wagering, shall be null and void; and no suit shall be brought or maintained in any Court of law and equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made.

Since the contract in question was admittedly not a contract "by way of gaming or wagering," it was not therefore affected by the first limb of the section. It was said, however, that the contract came within the second limb, "no suit shall be brought . . . . for recovering any sum of money . . . alleged to be won upon any wager." He (his Lordship) could not regard that limb of the clause as having any such far-reaching effect as to invalidate such a contract as was in question. It was, to his mind, as a matter of construction to be treated rather as a provision dealing with procedural matters which were to be the consequences of the simple proposition (stated in the first limb) that all contracts by way of gaming or wagering were to be null and void.

LORD SIMON'S VIEW

LORD SIMON, in the course of his opinion, said that the conclusion to be reached by the House in the appeal would determine the answer to a question which had been the subject of considerable debate among legal textwriters and commentators for 40 years past—namely, whether the decision arrived at by the Court of Appeal in Hyams v. Stuart King (24 *The Times* LR 675; [1908] 2 KB 696) was good law.

In that case the promise, at the request of the loser of a bet, by the winner not to present or seek to enforce payment of the loser's cheque for the amount which he had lost, together with the winner's promise not to expose his default, was held by the majority of the Court (Sir Gorell Barnes, President, and Lord Justice Farwell) to be good consideration for a new and enforceable agreement by the loser to pay what was owing. Inasmuch as forbearance to claim prompt payment of an unenforceable debt like a bet could not constitute good consideration for a legally binding promise to pay the amount later on, the real point of the decision of the majority was that the promise not to expose the loser's default to his detriment constituted effective consideration, in consequence of which the sum owing could be recovered in an action. Lord Justice Fletcher Moulton delivered a dissenting judgment, holding that the language of section 18 of the Gaming Act, 1845, prevented the winner from recovering in the action the sum sued for, as in his opinion it was "a sum of money alleged to be won upon a wager," notwithstanding that the fresh promise had been made.

The real issue in the case was not whether there was "a fresh bargain," or whether the respondents gave good consideration for the appellant's agreement to pay in the manner defined in the letters of August 17 and 20, but whether the payments which he thus contracted to make were payments of "a sum of money alleged to be won upon a wager," within the meaning of the second limb of section 18. What was the contract alleged by the respondents on which the suit was brought? It was a contract to pay what Tattersalls' Committee ordered the appellant to pay, though the respondents were giving more time for payment.

But there could be no question that what the committee ordered the appellant to pay was a sum of money which the respondents had won from him on wagers as to the result of horse races. The arrangement by the very terms of the letter of August 17 was to pay by instalments "the balance of our account," and the account was an account of betting transactions, and nothing else. The first limb of section 18 did not apply to the

case because the contract sued on was not "by way of gaming or wagering," but was a new bargain; but inasmuch as the new bargain was to pay the betting account, an action brought on it, as it seems to him (his Lordship), was, nevertheless, brought for recovering sums won by betting.

In opposition to that view of the matter three considerations were urged. First, it was said that the second limb of the section was mere repetition of the first, and thus if the action was not defeated under the first limb it could not fail under the second. Secondly, that last contention was varied by arguing that the second limb was not entirely tautologous, but was governed by the opening provision which enacted a substantive change in the law, by following that up with the corresponding provision relating to procedure. Thirdly, it was suggested that the word "alleged" in the second limb created a difficulty, which showed that the appellant's construction of the section was wrong.

The rule that a meaning should, if possible, be given to every word in the statute implied that unless there was good reason to the contrary, the words added something which would not be there if the words were left out. The presumption, therefore, was that the second limb of section 18 was not coincident in effect with the first limb. In Hyams v. Stuart King (*supra*) Lord Justice Fletcher Moulton observed that "too little attention has been paid to the distinction between the two parts of this enactment, and the second part has been treated as being in effect merely a repetition of the first part."

What happened in such a case as that was that by a new contract it was sought to transform an obligation of honour into a legal liability and the argument against the appellant on that part of the case must be that that transformation turned money which was in the first place won on a wager into something else. But it appeared to him (Lord Simon) that, at any rate on the facts of the present case, it was clear that the sum of money sought to be recovered not only owed its origin to the fact that bets were made but was itself a sum of money so won.

LORD NORMAND, LORD GREENE and LORD MACDERMOTT delivered opinions allowing the appeal.

LORD OAKSEY and LORD RADCLIFFE delivered opinions that they would dismiss the appeal.

Reminiscences of an Aged Litigant

By JERRY J. SULLIVAN
of the Pensacola (Fla.) Bar

He said, "It is my property; it all belongs to me." Have you owned it long?" He replied, "Yes, I have been fighting these land-grabbers for more than forty years. They have been trying to rob me of my property."

"Well then, if you have been fighting that long you must be a determined fighter of the old school." Catching another hold on his walking stick and squaring himself around, he took another chew of tobacco and gave me a more interesting look, saying, "I have been a fighter all my life, and I am still a fighter. I am fighting the land sharks now; they are trying to rob me of my rights."

"Well," says I, "that kind of fighting is not very dangerous. Have you ever heard the cannon roar and smelled the smoke of real battle?" "I should say so. Many years ago, I followed General Walker in that eventful trip to Costa Rica where we fought the natives in the tall grass. I remember General Walker as well as though it were only yesterday I saw him. He was the one-eyed man of destiny and the bravest of the brave. Our effort to establish an empire or government headed by General Walker in Central America was a failure, though we made a hard fight, and I am glad I was there."

Stopping for a moment or so, moving his stick about and striking his short, stubby beard with his right hand, he said, "These land-grabbers will do anything to beat a man out of his property; they perpetrate frauds and take advantage of people; they should not be tolerated." Believing that someone had been trying to take the old man's land away from him, I gently inquired, "Have you owned the land long?" "I have owned this land all my life." "Well then, you must have inherited it." "It was granted by the King of Spain to my grandfather when Florida was under the Spanish flag, in recognition of services rendered by a loyal subject to the king." "So it is a Spanish grant," I interrupted, "and is it very large?" "Yes, it is about eight hundred arpents (Spanish acres) and worth more than three hundred thousand dollars."

Pausing for a moment or so with a serious expression on his face, he said, "I have never been accorded my rights under the Fourteenth Amendment, which says, 'No person shall be deprived of property without due

process of law.'" "Who are these land sharks you speak of, and what are they doing to you?" "I tell you I have been fighting them for more than forty years and they have been trying to keep me out of my property; it is mine."

In order to show a sympathetic spirit to the old man, I remarked, "They must be very bad and should be exposed." The old man became somewhat warmer. With his left hand doubled and resting on his left leg and his right index finger in the air pointing towards me in order to give force to his expression, he said, "I have fought the bench, the bar and the aristocracy of this city without a dollar for more than forty years, and I am still here." Then he settled back into his seat. I said, "You must have started this fight soon after the surrender." In reply he said, "No. I never surrendered; I left the army the night before Lee surrendered. I have always tried to stand up for what I thought was right, regardless of results."

I joined in, "A man of your determined spirit must have had some friction with Federal authorities during the reconstruction days." With a new subject in his mind, his countenance appeared brighter, and he said, "I was held a prisoner for about ten months in those days." He did not mention for what reason he was held a prisoner, and being somewhat curious to know, I suggested, "You must have given the Federal authorities some trouble." "I was held on the charge of having killed a man who assaulted a white lady within my sight. I hit him on the head with an iron dipper, which lick brought his career to a close in a short time. I was immediately arrested, charged with murder and held at Fort Pickens to wait trial. After being there some ten months I enjoyed the same liberty given some other prisoners of walking on the outside of the walls during the day.

"One afternoon an officer asked upon what charge I was being held, which I told him. The officer laughed, and said: 'Well, well. We will pass you out tonight.' He said: 'Do not come to the prison gate this afternoon at sunset as usual, but remain on the outside, and I will see that you are checked in; get on the boat leaving the wharf at nine o'clock for the other side, and you will have no trouble in getting away.'

"I followed the suggestion given. After landing from the island, I remained in the country a month or so and returned to the city."

He paused for a moment or so, with a slight movement of his right hand in stroking his beard. His mind seemed grasping for another subject, when he said, "You can't get justice in the courts here. The supreme court says, I have the title, the outstanding title, and I should have possession. I have a lawyer con-

ing here from Texas and there is something moving now." With these remarks the old man appeared to be more contented.

"Did you not have fears of being hanged for killing the man during the reconstruction days?" "No, it never entered my mind. I never had any fears. I believe I was justified." Then he muttered, "I would send the land-grabbers a challenge to fight a duel this afternoon if I thought they would accept it. I believe that a duel is a good way to settle trouble. I am still a believer in it."

In order to shift this great land subject from the old man's mind, I asked, "Have you ever been in Mexico?"

"I had a longing desire to join the army of Maxmilian, and I had an associate who was to accompany me from New Orleans to serve in the archduke's army, and upon the eve of our departure from New Orleans, we learned from an authentic source that the archduke had failed to secure aid in Europe, and that the empire for which he was fighting was doomed. This was followed shortly by the news of his surrender and the death of Maxmilian. His execution was a great shock to everyone. Let me see, this occurred over forty years ago now. I am sorry I did not get upon the battlefield. I would have been a loyal soldier for the archduke. I would have been in the thickest of the fight, right up in the front rank; and might now be lying in a grav on a hillside in old Mexico, in stead of fighting these lan sharks; I have title by prescrip tion; they have no title."

Anxious to learn something o the land sharks or grabbers a he called them, I inquired, "Hav you ever had your land in th courts and had the advice o counsel learned in the law? With an appearance of extreme dissatisfaction, he stated, "Yes I have. I have had more than a score of lawyers from time t time employed in my litigation during these forty odd years. I have always preferred to ge nonresident counsel to handle m suits. I have had them com here from a long distance, fro Chicago and the Rio Grande. I remember I had one who cam from Chicago, who, after lookin into my case told me that I ha an excellent case, and that I would win beyond any question He was wined and toasted by th land-grabbers before he re turned. A short time afterward I received a note from him say ing that on account of the deli cate condition of his wife, he would not be able to handle m case, and so on with one pretext and another they would stop short.

"I had one attorney who came here from a distance and who would not wine or dine, but attended to business and had a brilliant record. He was mysteriously knocked from the second-story gallery of his boarding

house and went home with many bones broken, never to return. I made some inquiries about how it happened, but never could get anything positive. I had my own suspicions. I have had some counsel who were able men and who would have carried my suit to a victorious termination had not death overtaken them, to my great misfortune. The fight is still on, just as strong as it was when I commenced forty odd years ago. I will continue."

Then I interrupted, "What will become of the litigation when you are gone?" With a great degree of satisfaction, he remarked, "It will continue. In a few years more I may be sleeping in that cemetery over there by the side of my people, but this fight I have waged for so many years will be carried to final victory by others. The fight will continue without me, for it is truly said, 'Justice will eventually win.'" "It certainly will," said I.

The litigant passed away many years ago and went to sleep with his fathers in the cemetery where he longed to lie until Judgment Day. With him went the litigation. No one ever appeared to pick up the fallen torch and carry on the battle to final victory as he had fondly hoped.

Safeguarding the Jury

About twelve years ago, while I was acting as District Attorney in one of the sparsely populated counties of Northern California, I was visited by the newly elected Justice of the Peace from the most obscure outlying township. He was to preside in the back room of his grocery store on a lonely road way out in the brush, where in all probability he would not be very busy with judicial matters. However, being a conscientious old fellow, he asked me to brief him on some of the necessary procedure. Among other things, I furnished him with a typewritten paper setting forth the wording of various oaths which he might be called upon to administer on different occasions.

A few months later, I was prosecuting a fish and game law violation in my friend's Court. The defendant was represented by counsel and demanded a jury trial. In due course, the Court convened for the trial, the jury was selected, and we were told to rise. Thereupon, the Judge put on his spectacles, placed his left hand on his right breast, and holding a paper in his right hand, addressed the jury as follows: "Do you solemnly swear that the testimony you are about to give before this Court will be the truth, the whole truth, and nothing but the truth?" To which the worthy jurors replied in unison, "I do."

Contributed by: Matthew E. Marsh
Chico, California

Proved by a Judicial Digest

In the District Court of the United States for the District of Oregon

UNITED STATES OF AMERICA
vs.
298 Cases, more or less, each containing 24 cans article labeled in part "SKI SLIDE BRAND CENTER CUTS TIPS REMOVED ALL GREEN ASPARAGUS CONTENTS 1 Lb. 3 Oz."

Civil No. 4265
MEMORANDUM OPINION

Defendant is an asparagus packer. One of his products is the center cut of the asparagus. This retails for 20¢ per can (1 lb. 3 oz.) containing 95 to 100 cuts, as compared with 40 to 45 cents per can for the choicer tips.

The Government contends that defendant's center cuts are fibrous and woody beyond the permissible limits set up by the Federal Food, Drug and Cosmetic Administration. Three witnesses for the Government said that they had each eaten a can (or attempted to) of defendant's cuts. The composite of their testimony was that 25% or more of the cuts were inedible, and the Government's witnesses condemned them as a good product.

On the other hand, the Director of Mary Cullen's Cottage found only 5 or 6 pieces out of 100 that she had to lay aside. Confronted with this conflict in testimony, I obtained counsels' consent to eat a can. This I have done, although I confess had I understood all the difficulties of the undertaking, I might not have been so bold.

To eat a can of asparagus hand-running, as the saying is, is quite a chore. I took three days to eat the can. That, I can now state, is as much as an old protein user should attempt on his first venture into herbalism. I suspect the Government witnesses tried to eat their cans all at one time, and that may explain the severity of their judgment about defendant's asparagus. I can see where after 50 or 60 cuts, eaten without spelling oneself, one might become very particular.

My test more than confirmed Miss Laughton's good opinion of the cuts. She found 5 or 6 per cent. inedible, whereas I ate all of my can, and felt that I was helped by it. There was one runty, tough piece and two or

three slivers, but I treated them as de minimis.

I agree with the Director of Mary Cullen's Cottage that this is an excellent product, particularly considering its low price. Not everybody in this country can "keep up with the Joneses" and eat only asparagus tips. Indeed it seems strange to me that the Government should be interested in keeping from the market a moderately priced, wholly nutritious food product. I should think in this period of declining income the Government's interest would be the other way. If Mr. Prendergast will prepare appropriate findings, I will give his client's center cuts a clean bill of health. They deserve it.

Dated May 9, 1949.

Claude McColloch,
Judge

Reply to a Collection Letter

Dear Sir:

In reply to your request to send a check, I wish to inform you of the status of my bank account which makes it almost impossible.

This condition is due to Federal Laws, State Laws, County Laws, Corporation Laws, Liquor Laws, Mother-in-Laws, Brother-in-Laws, Sisters-in-Law and outlaws.

Through these laws I am compelled to pay a business tax, amusement tax, head tax, school tax, gas tax, light tax, water tax, sales tax, meat tax, carpet tax, income tax, food tax, furniture tax and excise tax. Even my brains are taxed. I am required to get a business license, car license, truck license, meat license, not to mention a dog license and marriage license.

My business is so governed that it is no easy matter for me to find out who owns it. I am inspected, suspected, disrespected, rejected, infected, deflected, dejected, examined, re-examined, informed, reformed, chloroformed, required, summoned, fined, commanded, and compelled until I provide an inexhaustible supply of money for every known need, desire or hope of the human race.

Simply because I refuse to donate to something or other I am boycotted, lied about, talked about, held up, held down, and robbed until I am almost ruined.

I can tell you honestly that except for the miracle that happened I could not enclose this check. The wolf that comes to the door just had pups in my kitchen. I sold them to the Zoo and here is the money.

Thanking you, I remain,

P.S. Even my wife is on strike.

Contributor: Majorie E. Beatty
Ithaca, N. Y.

Condensed from Tennessee
Law Review, June, 1949

Government AND THE Practice of Law

By E. BRUCE FOSTER
President of the Knoxville Bar Association

STUDENTS begin a career in a profession second in greatness only to the ministry. While the ministers concern themselves with men's souls, you will concern yourselves with men's individual and property rights.

I read in the local press an article dealing with the ability of examiners employed by various Federal agencies. There was nothing particularly striking about the article. It simply stated that one-third of the examiners were considered unqualified. However, down in the middle of the article, there was a list of some thirteen different agencies of the government which employ these examiners to hold hearings.

While our government is about 175 years old, most of those examiners were provided for in laws passed within the comparatively short time that I have been practicing law; and the passage of those laws exemplifies a trend in the government which, if not checked and reversed, will eliminate the necessity for lawyers within another generation, or two at the outside.

Perhaps you consider that statement rather startling; but it must be remembered that those examiners, and the boards to which their decisions are appealable in most cases, hear and determine controversies between litigants that formerly had their differences settled by courts, either with or without the aid of juries, after hearings upon evidence introduced under rules formulated in accordance with legal principles evolved over the period since decisions and statutes began to be recorded. And in most instances the findings of fact of the examiners and boards are binding upon the parties, if there is any evidence to support those findings. But bear in mind that likewise, in most instances, the examiners hear the case, not according to the rules of evidence as we know them, but substantially on such evidence as they may think properly bears upon the case.

Thus after a hearing by one of these examiners, and appeal to the proper board, the facts upon which a decision is to be based, and a right determined, are fixed and cannot be inquired into by your duly constituted

courts except to determine whether there is or is not *any* evidence upon which the finding is based.

Now, what is the supposed necessity for the appointment of these examiners and boards? The answer is that they are necessary in order to assist in the collection of the revenues of the Federal government, to assist the Federal government in caring for the needs of the people, and to assist in the operation or regulation of business, public or private, by the Federal government. A rather simple answer, but what does it indicate?

It simply shows that the Federal government, step by step, has taken over, and is taking over, more and more responsibility for the problems of the people and the regulation of their business.

Likewise, with each additional regulation of business by the government, there is a corresponding reduction in the owner's control over that business. And whether or not there has been a compliance with the regulations is also determined on the basis of facts found by such examiner or agency in accordance with a similar procedure.

What I am really trying to say to you is that we are fast approaching a government by men and giving up our government by law. The people of our nation cannot look to the government to supply all of their needs and regulate all of their business without losing all freedom of choice. The government cannot do those things without regulating the lives of its citizens in detail.

Thus, forgetting the fact that the examiners and the boards are appointed because of their particular political leanings and philosophies, and assuming that they are chosen for their ability and character; nevertheless, they are human, and in dealing with government in business we shall have one individual passing upon the right of another to receive a governmental benefit, or to be free from a governmental regulation. All business and industry runs or does not run, dependent upon governmental order. What it does when it runs is determined by like order and not by the wishes of business. As for the individual, he becomes more and more dependent upon his government and gives up more and more of his property and rights, and he too lives according to governmental regulation; and ultimately there will be no individual or property rights except such as the state may deem proper. The government will own the business and the rights of all will be determined by what those in power consider for the best interest of the government. What then will be the necessity of having lawyers?

But what can be done about it? The problem cannot be solved by simply electing to office the

party out of power. I wish it were that easy. No, both major political parties advocate entirely too much control by government over the money and business of the nation. They do this because the people are still gullible enough to think that they can get something for nothing; that you can take from haves and give to the have-nots with complete immunity and without any danger to our economic system. They ignore the fact that a government, as such, cannot create wealth; that it can only take wealth from one citizen, or subject, and give it to another; and that when the capital of those who have it has been confiscated completely, or so reduced as to make it impossible to produce other wealth, then there is nothing left but state socialism. In advancing these ideas and making promises of additional gratuities, each party is simply trying to buy votes with the national treasury. No, the answer is not to be found by keeping in power the Democrats or by placing in power the Republicans.

The answer lies in a complete re-education and change of heart both of those in government service, and the people who maintain the government, the citizens.

You say, what am I to do about it? Well, your stock in trade will be human rights and property rights. People will discuss those rights with you every day. And many of these people will be sensible and influential. You can teach these people that any law or system of government which ignores basic principles of justice as between man and man is not only wrong, but will ultimately fail, for justice is the main purpose of government. You can teach these people that a good government may protect the weak from oppression and exploitation by the strong and unscrupulous, but that a just and wise government will not penalize the strong, industrious, and thrifty in favor of the weak, lazy, and shiftless. You can teach them that it is the duty of the people to support the government and not the responsibility of the government to support the people.

You can further teach them that man has the inalienable right to the life, liberty, and the fruits of his labor; that our Constitution specifically guarantees these rights to every citizen; that no citizen or group of citizens, including the State, can infringe on these basic rights; and that they are of such value that they should not be voluntarily surrendered at any price.

If you and all other lawyers would teach those things at every opportunity, it would go a long way toward solving the problem.

A Law Professor's Version of the Story of The Three Bears

By EDWARD A. HOGAN, JR.
Dean, School of Law
University of San Francisco

ONCE upon a time (the exact date is not known, but it is not likely to be put in issue, since the memory of man runneth not to the contrary), a little girl (about whose parentage there is no issue and who will be presumed, therefore, to be legitimate) named Goldilocks, wanted to visit her grandmother (whether paternal or maternal is immaterial), who lived on the other side of the forest (the exact location of which may be determined by metes and bounds by consulting the records of the Registry of Deeds in the county in which the said premises are located). Little Goldilocks was given permission by her parents. Throughout this narrative the parents will be presumed to be reasonable and prudent parents because they warned little Goldilocks of all known and foreseeable dangers and instructed her to be guided accordingly.

WHEN little Goldilocks was perambulating the perimeter of the forest, she was attracted by a single dwelling of unusual construction set back from the highway in a manner which conformed exactly to the zoning regulations lawfully enacted and promulgated. This was not, as you will note, an attractive nuisance since the object was one with which all children are familiar and the dangers of which, if any, are obvious.

DISREGARDING the instructions of her prudent parents, she entered the land by crossing over the imaginary white fence which Blackstone says surrounds each parcel of realty. For this she became guilty of trespass quare clausum fregit pedibus ambulando. Knocking at the door and receiving no reply, she turned the knob, gave a good push and entered. This, as you know, was trespass quare clausum fregit vi et armis.

SHE saw on the table three bowls of porridge. The first was too hot and the second was too cold. The third was just right so she ate it all up. This was trespass debonis asportatis.

INSIDE the house she spied

three chairs. She sat in the big chair, which belonged, quite obviously, to the Daddy Bear, but it was too hard. (Since she did no harm this could be no trespass.) The medium-sized chair was too soft, so she sat in the little chair, which, she assumed, belonged to the Baby Bear. Since her weight exceeded the capacity of the chair, she broke it all down. Harm being done, she committed an ordinary trespass to personal property.

BY that time little Goldilocks was tired. She found a bedroom with three beds. She tried the first and found it too hard, the second was too soft, but the third was just right. So she lay down in the third, or Baby Bear's bed, and soon was fast asleep. It is not so easy to tell what kind of a wrong this happens to be, and it may well be that on this point there are two schools of thought. It is not, however, trespass quare clausum fregit vi et armis ab initio since this misfeasance did not follow an entry under license of law.

WHILE she was fast asleep, the proprietors of the premises returned. Angered and aroused at the torts and trespasses they sought out the tortfeasor. Baby Bear found her in his own little bed and raised a hue and cry. Just then little Goldilocks woke up, realized her predicament and ran home as fast as she could with the Three Bears in fresh and hot pursuit.

SHE got home just in time to slam the door in the faces of three angry bears. It is a good thing she did too, because now we do not have to decide if a bear can be guilty of assault and battery.

AND now, I think it would be a good idea for you to go to sleep before you make the discovery, made by judges in the courts before which I practised, once upon a time, that most of what I have to say is incompetent, irrelevant and immaterial.

Neighborhood Ethics

In answer to the question: Should a lawyer in any way communicate or negotiate with the client of his adversary? an applicant for admission to the Federal Bar in Tennessee answered as follows:

The answer expected here is undoubtedly "no." There are, however, cases where a lawyer could communicate with the client of another without violating the Canons of Ethics, even though in some of these the spirit of the canon might be tempted. For example, if my client is a grass widow and my adversary's client is a personal friend of mine, it could hardly be improper for me to communicate with him on the subject of borrowing his lawn mover.

Contributed by: James H. Anderson
Chattanooga, Tennessee

Among the New Decisions

Amusements — *liability for injury to participants.* An exceedingly valuable case on the law of negligence was decided by the California Supreme Court in Hudson v. Craft, 33 Cal2d (Adv 629), 204 P2d 1, 7 ALR2d 696, opinion by Justice Carter. In that case the proprietor of a carnival outfit operated in connection therewith a boxing and wrestling concession for which a separate admission was charged. This, for want of a license, he could not legally do.

A boy of eighteen, hired for a small sum to participate in a boxing match, sustained physical injuries therein. It was held that by reason of the illegality of the boxing match, he could recover damages from the carnival proprietor and that his father likewise could recover the son's medical and surgical expenses.

An extensive annotation in 7 ALR2d 704 discusses "Liability for injury to or death of participant in game or contest."

Automobile — *proof of title.* The summary to the case of Mielke v. Leeberson, 150 Ohio St 528, 83 NE2d 209, 7 ALR2d 1342, opinion by Stewart, J., as prepared by the ALR editors, is as follows: In an action to recover for damage to an automobile resulting from a collision, it appeared that the plaintiff was in possession of the car, he testified that he was the owner, and he introduced a card showing that the car was registered in his name. However, it was contended by the defendant that the plaintiff had not established his title to the automobile, and hence could not recover, as he did not produce a certificate of title as required by statute providing that no person shall require any right, title, claim, or interest in or to a motor vehicle until he shall have had issued to him a certificate of title thereto, and that no court in any case shall recognize the title, etc., of any person to a motor vehicle unless evidenced by a certificate of title. The court of appeals, reversing a judgment for the

plaintiff, sustained this contention, holding that the plaintiff's evidence of title was not sufficient, and held that final judgment should be rendered against the plaintiff. The state supreme court agreed with the court of appeals to the extent of holding that proof of title was not sufficient without a certificate of title as required by the statute. However, as there was some evidence of the plaintiff's ownership, the proper procedure upon reversal was held to be a remanding for a new trial, rather than a judgment of dismissal.

The main point in this case is discussed in the annotation in 7 ALR2d 1347.

Carriers — *injury to intending passenger.* In City Transportation Co. v. Noel, — Tenn —, 216 SW2d 691, 7 ALR2d 545, opinion by Justice Burnett, it was held that the injury to an intending passenger in a public street who fell on snow and ice in approaching a motorbus which was stopped at a place designated by a municipal ordinance to take on passengers presents no basis for an inference of negligence on the part of the carrier and does not warrant a recovery against the carrier.

The situations out of which negligence may be predicated are set out in the numerous cases discussed in 7 ALR2d 549.

Carriers — *open door causing injury.* The Virginia Court in Watts v. Richmond, F. & P. R. Co. 189 Va 258, 52 SE2d 129, 7 ALR2d 1418, opinion by Staples, J., in an action for personal injuries sustained by a passenger who claimed that as he was passing from one car to another he was thrown off balance by a lurch of the train and fell from an open vestibule door, it was held that an inference of the carrier's negligence from the happening of the accident was not precluded by the fact that the door could have been opened by a passenger; that the testimony of a witness, that he heard the door of the vestibule of the car in which he was riding opened by a passenger need not be accepted as indicating that the act of a fellow passenger was the cause of the injury, where the evidence indicated that the plaintiff fell from another car; and that a verdict for the plaintiff was supported by the evidence.

The annotation in 7ALR2d 1427 discusses "Open door as ground of liability of carrier for injury to passenger falling or alighting from vehicle."

Contracts — *nonregistered foreign corporation.* The Michigan Court in Gill v. S. H. B. Corporation, 322 Mich 700, 34 NW2d 526, 7 ALR2d 252, opinion by Justice Dethmers, held that one whose amended contract with a foreign corporation has been fully performed by the corporation may not, on the ground that at the time of

amendment the corporation's certification to do business in the state had been canceled, revoke the amended contract and recover under the original agreement.

The title to the annotation in 7 ALR2d 256 is "Effect of execution of foreign corporation's contract which, while executory, was unenforceable because of noncompliance with conditions of doing business in state."

Corporations — *transfer of stock of decedent.* A practical question arises quite frequently in the case of transfer of corporate stock belonging to a decedent. In Middendorf v. Kansas Power & Light Co. 166 Kan 610, 203 P 2d 156, 7 ALR2d 1235, opinion by Thiele, J., it was held that a corporation is not liable to a legatee of stock for making a transfer thereof on its books to a third person, where the transfer is apparently in the ordinary course of administration for the purpose of paying debts or legacies, but if it is shown that the transfer is not in the ordinary course of administration, the corporation, before making the transfer, must inquire into the authority of the executor to have the transfer made.

"So you know the Chief, do you? Well, now that's just ducky! That's him, sitting there, and I'm sure he'll be glad to talk to you!"

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The annotation in 7 ALR2d 1240 discusses "Rights, duties, and liability of corporation in connection with transfer of stock of decedent."

Divorce — *change of residence pendente lite.* The summary of the case in Jackson v. Jackson, — Okla —, 205 P2d 297, 7 ALR 2d 1410, opinion by Justice O'Neal, as reported in volume ALR2d, is: On a wife's appeal from a decree of divorce obtained by her husband, it was held that the jurisdiction of the court over the divorce suit was not terminated by the husband's removal from the state after its institution; that marital discord was in the circumstances cruelty constituting ground for divorce, that under the circumstances no abuse of discretion was involved in refusing a continuance because of the illness of one of defendant's counsel; and that accusations made by the wife against the husband after the institution of the suit might be shown as corroborative of her prior ill-treatment of him.

The annotation in 7 ALR2d 1414 discusses "Effect on jurisdiction of court to grant divorce, of plaintiff's change of residence pendente lite."

Easements — *conveyance with reference to plat.* Chief Justice Hudgins, of the Virginia Supreme Court of Appeals, wrote the opinion in Lindsay v. James, 188 Va 646, 51 SE2d 326, 7 ALR 2d 597, holding that conveyances of lots in a subdivision by reference to a plat showing streets and alleys carry with them the right to the use of such nonabutting streets and alleys as may be necessary to the enjoyment and value of such lots.

This interesting problem in the law of easements is exhaustively discussed in 7 ALR2d 607.

Eminent Domain — *promises by condemner.* An interesting question in the law of eminent domain was presented in Little v. Loup River Public Power District, 150 Neb 864, 36 NW2d 261, 7 ALR2d 355, opinion by Justice Boslaugh.

A power company, seeking to acquire by condemnation an easement for a right of way over farm land adjoining a town, stated, in its application for condemnation, that it would pay all future crop damages incident to the maintenance of the power line. Apparently on the strength of this statement, the commissioners made an award of only $800. On appeal to the district court, that court, excluding the statement from evidence, increased the award to $2,000.

The appellate court, upholding the ruling of the district court excluding the disputed statement, pointed out that it was not an agreement between the parties, but a mere unaccepted promissory stipulation, which could not properly be considered in reduction of the damages to which the owner was otherwise

constitutionally entitled. The court also held that the verdict of $2,000 was not excessive.

An extensive annotation in 7 ALR2d 364 treats the question "Compensation for, or extent of rights acquired by, taking of land, as affected by condemner's promissory statements as to character of use or undertakings to be performed by it."

Eminent Domain — *temporary use.* In Kimball Laundry Co. v. United States, 338 US 1, 93 L ed —, 69 S Ct 1434, 7 ALR 2d 1280, opinion by Justice Frankfurter, it was held that the proper measure of compensation for a temporary taking of private property for public use is the rental that probably could have been obtained, and not the difference between the market value of the fee on the date of the taking and its market value on the date of its return.

The annotation in 7 ALR2d 1297 discusses "Elements and measure of compensation in eminent domain for temporary use and occupancy."

Estoppel — *ratification of ineffective conveyance.* The Texas Supreme Court in Reserve Petroleum Co. v. Hodge, — Tex —, 213 SW2d 456, 7 ALR2d 288, opinion by Justice Smedley, held that deeds conveying fractional oil, gas, and mineral interests in land, inoperative when delivered for want of description of the land, are effectively ratified and confirmed when the grantors subsequently join with their grantees in the execution of an oil and gas lease of such land, in terms formally recognizing the previous mineral deeds.

An extensive annotation in 7 ALR2d 294 discusses ratification of all types and defenses to instruments.

Evidence — *unaccepted offer as evidence of value.* There is conflict of opinion on the question involved in Thornton v. Birmingham, 250 Ala 651, 35 So 2d 545, 7 ALR2d 773, opinion by Judge Simpson. It was held that offers received by the owner of property sought to be condemned are, though recent, inadmissible as evidence of fair market value.

The conflict in views on this question is discussed in the annotation in 7 ALR2d 781.

Fidelity Bonds — *coverage on year to year bonds.* The decision in United States v. American Surety Co., 172 F2d 135, 7 ALR2d 940, opinion by Circuit Judge Clark, is to the effect that a surety bond, on the form prescribed by the Post Office Department, securing the faithful performance of the duties of a post office clerk, reciting the premium charged, which was renewed annually for several years thereafter by the clerk at the same premium, is cumulative and not merely continuous, under the Federal statutes, so that the government may recover

against the surety company the full amount of a series of embezzlements by the clerk over the period of years covered by the bond and its renewals, not exceeding in any one year the penal sum on the bond and the renewals, although the total of such defalcations exceeds the penal amount of the bond.

The annotation in 7 ALR2d 946 discusses "Extent of liability on fidelity bond renewed from year to year."

Food — *implied warranty.* Claiming to have been poisoned by food purchased at the defendant's restaurant, the plaintiff brought suit on three counts, express contract, implied contract, and negligence. It appeared that plaintiff asked defendant in the latter's restaurant what he had for a good sandwich, and that the defendant replied, "How would you like a good fresh corned beef sandwich?" The plaintiff assented and was accordingly served and he consumed the sandwich on the premises. His illness, diagnosed as food poisoning, followed. There was no evidence of negligence, and the trial court directed a verdict for defendant on both the first and second counts, and the jury re-

"Speed it up, will you? I didn't knock myself out becoming state champ short-hand writer—for this!"

turned a verdict for defendant on the third count.

The court on appeal declined to depart from its established doctrine that there is no implied warranty of the quality or fitness of food served in a restaurant for immediate consumption on the premises, such transaction not constituting a sale. It was further held that the words used by the parties were too indefinite and uncertain in meaning to be the basis of an express warranty. There was held to be no error. Albrecht v. Rubinstein, 135 Conn 243, 63 A2d 158, 7 ALR2d 1022, opinion by Jennings, J.

An exhaustive annotation on "Implied warranty of fitness by one serving food" appears in 7 ALR2d 1027.

Fraud on Creditors — *improvement of property held by entireties.* The Michigan Court in Dunn v. Minnema, 323 Mich 687, 36 NW2d 182, 7 ALR2d 1099, opinion by Justice Carr, held that payments made by a husband out of his individual earnings on a contract for the purchase of land by himself and wife as tenants by the entireties, after the recovery of a judgment against him had rendered him insolvent, may be deemed to have been made in fraud of the judgment creditor.

The annotation in 7 ALR2d 1104 discusses "Use of debtor's individual funds or property for acquisition, improvement of, or discharge of liens on, property held in estate by entireties as fraud upon creditors."

Implied Contracts — *service rendered relatives.* In Re Fox' Estate, — W Va —, 48 SE2d 1, 7 ALR2d 1, opinion by Lovins J., it was held that the presumption of gratuity with respect to services rendered between near relatives living in the same household as members of the family is applicable to services rendered by a daughter-in-law for her mother-in-law.

The broader question "Recovery for services rendered by member of household or family other than spouse without express agreement for compensation" is extensively treated in the annotation in 7 ALR2d 8.

Income Taxes — *constructive receipt.* The First Circuit in an opinion by Circuit Justice Frankfurter held in Ross v. Commissioner, 169 F2d 483, 7 ALR2d 719, that justifiable reliance by the Commissioner of Internal Revenue on a tax return in which the taxpayer failed to report taxable income does not raise an estoppel in the absence of either deliberate or unintentional misrepresentation of facts by the taxpayer.

The question of constructive receipt is covered in the annotation in 7 ALR2d 735.

Income Taxes — *premiums paid for employee.* Pension rights which have made headlines are of continuing impor-

tance. A timely decision in State v. Pollock, 251 Ala 603, 38 So2d 870, 7 ALR2d 757, opinion by Judge Foster, holds that the cost of a single premium retirement annuity purchased for an employee by his employer is taxable income of the employee in the tax year in which it was purchased, though there were no immediate benefits payable during such year.

The annotation in 7 ALR2d 766 discusses the income tax problem relating to these pensions.

Income Taxes — *proceeds of sale of interest in partnership.* An interesting point in income tax law was decided by the Second Circuit in Commissioner v. Lehman, 165 F2d 383, 7 ALR2d 667. Judge L. Hand delivered the well-reasoned opinion holding that in determining how long an interest in a partnership has been held, for the purpose of fixing the tax return on a capital gain to a partner resulting from the admission of a new partner, such interest is deemed to have been acquired at the time of his entry into the firm and not the date of acquisition by the firm of the assets held at the time of admission of the new partner, or the date of the death of a former partner whose interest was, under the partnership articles, which in such event provided for the continuance of the business, acquired by the firm; nor is the interest sold to be deemed, in the absence of proof to the contrary, that which was so acquired.

This question is discussed in 7 ALR2d 672.

Income Taxes — *purchase of own indebtedness.* The United States Supreme Court, opinion by Justice Burton, held in Commissioner v. Jacobson, 336 US 28, 93 L ed —, 69 S Ct 358, 7 ALR2d 857, that gains derived by a solvent natural person in straitened circumstances which compelled him to ask for time from his creditors, in purchasing from them at a discount his own obligations issued for borrowed money, are taxable income in the absence of a showing that any seller intended to release or make a gift of any part of his claim.

The question decided in the above case is extensively discussed in the annotation in 7 ALR2d 871.

Income Taxes — *stock dividend.* A very interesting income tax question is presented in Commissioner v. First State Bank, 168 F2d 1004, 7 ALR2d 738, opinion by Circuit Judge Holmes of the Fifth Circuit. It was held that a bank's declaration of a dividend in kind to stockholders, not by way of liquidation, by the assignment of notes for which it has taken deductions in former years as worthless debts, at a time when the bank expected collections to be made on the notes and under an arrangement by which the

notes were not apportioned among the stockholders and collections thereon were made at the bank by a bank officer, is a realization of income by the bank under the anticipatory-assignment-of-income rule and the amount collected on the notes is taxable to the bank.

The title to the annotation in 7 ALR2d 750 is "Dividend in kind or stock dividend as affecting corporation's income tax."

Insurance — *reformation of policy.* The Ninth Circuit of the United States Court of Appeals in Richardson v. Travelers Insurance Co., 171 F2d 699, 7 ALR 2d 501, opinion by Circuit Judge Orr, held that reformation at the suit of the insurer, after twenty years, of a life insurance policy which through mistake of the insurer provides benefits in twice the amount purchasable for the premium actually charged is precluded by a provision of the policy that it shall be incontestable after one year except for nonpayment of premiums.

The subject of the annotation in 7 ALR2d 504 is "Incontestable clause as applicable to suit to reform insurance policy."

Limitation of Actions — *indefinite contract of employment.* The Circuit Court of Appeals for the Tenth Circuit in Israel v.

"All I did was tell him he was right."

Baker, 172 F2d 63, 7 ALR2d 192, opinion by Circuit Judge Huxman, held that under Oklahoma law the statute of limitations does not begin to run, so long as the services continue to be rendered, against a claim for services rendered over a period of thirty-one years in making a home for a widowed doctor and his child by a woman who also gave him incidental assistance in his practice, with the understanding that she would be compensated at the conclusion of their rendition.

The conflicting views on this question are treated in detail in the annotation in 7 ALR2d 198.

Mortgages — *adverse possession by mortgagee.* In Ham v. Flowers, 214 SC 212, 51 SE2d 753, 7 ALR2d 1124, opinion by Oxner, J., it was held that the taking of possession of land by a mortgagee before default does not affect title of the mortgagor or his right of redemption, nor does it destroy the relationship of mortgagor and mortgagee.

The annotation in 7 ALR2d 1131 discusses "Adverse possession: Mortgagee's possession before foreclosure as barring right of redemption."

Municipal Corporations — *liability for traffic device.* Justice Brown of the Connecticut Supreme Court of Errors prepared the opinion in De Lahunta v. Waterbury, 134 Conn 630, 59 A2d 800, 7 ALR2d 218, holding that a "silent policeman" at a street T-intersection, consisting of a concrete base, three feet two inches square at the pavement, three feet eight inches high and one foot eleven inches square at the top, five feet to one side of the center of the paved portion of the highway, fastened to the pavement with steel pins, surmounted by a metal standard carrying blinker lights and hooded lights which illuminated it, may be found by the jury to be a nuisance, with resultant liability on the part of the city to one colliding therewith.

The cases dealing with similar actions including both theories of tort and nuisance are extensively treated in the annotation in 7 ALR2d 226.

Nuisances — *venue of suit to enjoin.* The Oregon Court in State Ex rel. Yett v. Peters, — Or —, 203 P2d 299, 7 ALR2d 473, opinion by Justice Kelly, held that the venue of a suit to enjoin as a nuisance the use of land for quarrying rock lies in the county where the defendant resides or may be found, and not in the county where the land is situated, under a statute relating to "all other cases" after making specific provision for certain types of actions.

The subject of the annotation in 7 ALRd2 481 is "Venue of suit to enjoin nuisance."

Parent and Child — *decree as limiting parent's liability.* The summary of decision in Merrill

v. Merrill, — Ten —, 216 SW 2d 705, 7 ALR2d 488, opinion by Justice Prewitt, presents the case as follows: A divorced wife to whom $20 per month for the support of two minor children was decreed, incurred hospital and medical bills of a substantial amount on their behalf. It was held that while both parents were by statute under joint obligation to support the children, the wife was, in view of the disparity between her earnings and those of her husband, entitled to sue him in equity for the amount of the bills.

The several views on this question are treated in the annotation in 7 ALR2d 491.

Perpetuities — *effect of power of revocation.* A problem arising out of the creation of "living trusts" was presented in Ryan v. Ward, — Md —, 64 A2d 258, 7 ALR2d 1078, opinion by Chief Justice Marbury. Under the terms of a deed of trust, the income was given to the grantor's son for life, and upon his death, to "the lineal descendants, per stirpes, from time to time living, of the Grantor's said son until the death of the last surviving child of the Grantor's said son, who shall be living at the time of the Grantor's death." After this gift, there was a provision for a remainder interest in the son's surviving children and their issue. The grantor reserved the right to withdraw sums from the trust at any time, but not to exceed $1,500 in any one year. The value of the trust was approximately $32,500. The son had three children.

Holding the trust void as in violation of the rule against perpetuities, both as to the remainder interest and the gift to the lineal descendants after the son's death, the court held that (1) the grantor's withdrawal privilege was not such an effective power of revocation as to postpone the commencement of the perpetuities period until the grantor's death, and (2) the gift of the income to the lineal descendants was to a single class, not to three separate classes, and, being void as to some members of the class, was therefore void in its entirety.

The title to the annotation in 7 ALR2d 1089 is "Settlor's right to revoke or terminate trust, or to withdraw funds or invade corpus thereof, as affecting operation of rule against perpetuities."

Restrictive Covenants — *use as college fraternity.* The Georgia Court in Mu Chapter Building Fund v. Henry, 204 Ga 846, 51 SE2d 841, 7 ALR2d 431, opinion by Justice Hawkins, held that a covenant in a deed, that the land thereby conveyed "shall not be used otherwise than for residence purposes, and shall not be used for a sanatorium, hospital or infirmary, and no apartment is to be erected thereon," would be violated by the maintenance and operation of a college fraternity house as a gathering

place for its members wherein the members hold fraternity meetings, stage initiations into the fraternity, hold dances, rush parties, and other forms of entertainment, and where there is located on the first floor a storeroom, numerous radios, a soft-drink vending machine, and where other items of merchandise are offered for sale to those present in the house from time to time, and where there has been erected in front of the house a large neon sign, and the lights inside the house and the neon sign are kept burning at all hours of the night while the occupants engage in dancing and other activities.

The cases on this question are discussed in the annotation in 7 ALR2d 436.

Specific Performance — *damages for delay.* The Indiana Supreme Court in Pirichio v. Noecker, — Ind —, 82 NE2d 838, 7 ALR2d 1198, opinion by Chief Justice Starr, held that damages cannot be assessed, on a claim by a purchaser for the specific performance of a contract for the sale of land, for the loss of a prospective resale of the property at a higher price, regardless of the motive of the seller in refusing to convey, since such damages would be speculative and too remote.

The annotation in 7 ALR2d 1204 discusses all phases of dam-

"What—eh—oh, my new secretary,—about your age, I guess,—looks younger, though."

ages for delay in specific performance actions.

Wills — *change in stock as affecting.* In Adams v. Conqueror Trust Co., — Mo —, 217 SW2d 476, 7 ALR2d 268, opinion by Bradley, C., the Missouri Court held that a bequest by a testator owning stock in a corporation, part of which was represented by a certificate for forty shares, of twenty shares to each of his two nephews upon the decease of his wife, to whom he gave the income of his residuary estate for life with power to dispose by will of other than the shares bequeathed to the nephews, is specific rather than general or demonstrative and therefore entitles the nephews to stock into which, as a result of changes in the corporate structure, the original shares had been transmuted.

The annotation in 7 ALR2d 276 discusses "Change in stock or corporate structure, or substitution of stock by corporation, as affecting bequest of stock."

Wills — *contract to make.* The Illinois Court in Watson v. Hobson, 401 Ill 191, 81 NE2d 885, 7 ALR2d 1156, opinion by Justice Daily, held that an agreement between sisters for the future care and support of one by the other, in consideration of a promise of the conveyance of property, is not a proper subject of specific performance, where the sisters, although they lived together for some time after the agreement, became estranged and afterward lived apart with no prospect of reconciliation, and there is nothing to show that adequate damages cannot be awarded for any services previously performed, since, specific performance obviously being unavailable against the sister agreeing to furnish the care and support, the contract is not supported by the requisite mutuality of obligation and remedy.

The annotation in 7 ALR2d 1166 discusses "Remedies during promisor's lifetime on contract to convey or will property at death in consideration of support or services."

Wills — *forfeiture for contest.* An action was brought by other children to set aside a deed and transfer of funds by a father to a daughter, to which she set up as a defense that plaintiffs had no interest in their father's estate, the shares given by his will having been forfeited to her, under the terms of the will, by a contest instituted by one not a beneficiary. It was held that the provision of the will conditioning gifts on there being no contest was not limited to contests by beneficiaries, and was not contrary to public policy; that the "clean hands" doctrine did not preclude defendant from setting up complainants' lack of interest in their father's estate as a defense, and that it was immaterial that some of the children were alleged to be creditors of the estate, the bill not being a creditor's bill. **Alper v. Alper,**

— NJ —, 65 A2d 737, 7 ALR2d 1350, opinion by Heher, J.

The subject discussed in 7 ALR2d 1357 is "Provision of will for forfeiture in case of contest, as applied to contest by one not a beneficiary."

Zoning — *attached garage.* Modern plans for construction sometimes conflict with older regulations. For example, in Olson v. Zoning Board of Appeal of Attleboro, — Mass —, 84 NE 2d 544, 7 ALR2d 591, opinion by Justice Williams, it was held that a garage having roof and architecture similar to the dwelling and producing with the dwelling a unified architectural effect, physically joined to the dwelling by a paved breezeway connecting house and garage and enclosed within the roof and walls of the garage, is a component part of the dwelling and not an "accessory building" within a zoning ordinance prescribing building lines for structures other than accessory buildings.

The question discussed in the annotation in 7 ALR2d 593 is "Garage as part of house with which it is physically connected within zoning regulations or restrictive covenant."

Zoning — *size basis.* In Lockard v. Los Angeles, 33 Cal2d (Adv 427), 202 P2d 38, 7 ALR 2d 990, opinion by Chief Justice Gibson, it was held that a zoning plan making the line of demarcation depend upon the size of the commercial or industrial enterprises involved as measured by the number of employees is not unreasonable.

The annotation in 7 ALR2d 1007 discusses "Zoning based on size of commercial or industrial enterprises or units."

"The Light That Failed"

". . . At the time of oral argument in the instant case, the Stuart case was pending in the Supreme Court, and, desiring all the light possible, we have waited for the Supreme Court's decision. The case was decided November 16, 1942. . . .

"With all due respect to the Supreme Court, the light which we so eagerly anticipated, especially as to the applicability of Section 22 (a) is not as illuminating as we had hoped for. So we suggested to counsel for the respective parties that they submit a memorandum of their views as to the effect which the Stuart decision has upon the instant case. This has been done, and the light which we thought we perceived has been almost extinguished."— Major, Circuit Judge, in *Williamson v. Commissioner of Internal Revenue,* 132 F.2d 489, at 492 (1943).

Contributed by: James F. Wheeler
Louisville, Kentucky

The Right of an Accused to the Assistance of Counsel

By JOHN R. SNIVELY
of the Rockford, Illinois, Bar

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AMONG the most important rights relating to the administration of justice are the right to a speedy and public trial, by an impartial jury, the right to be informed of the nature and cause of the accusation, the right to be confronted with the witnesses against him, the right to have compulsory process for obtaining witnesses in his favor, and the right to have the assistance of counsel for his defense. It is the duty of every government to protect and preserve these rights.

Long ago the freedom of Christian leaders was threatened and violated. Jesus was "arrested" at night by "a great crowd with swords and clubs," who took Him to the home of the high priest. No time for defense or honest testimony was allowed, nor did He have the assistance of counsel. False testimony was encouraged. The court was clearly prejudiced. It mattered little what the Accused might say in His defense. When He did speak, His words were considered blasphemous. Since He was said to have wrong ideas (not because He had committed wrong acts) it was said, "He deserves death."

In Philippi, Paul was dragged before civil magistrates by the owners of a slave girl. Since Paul and Silas were accused by so many, the magistrates assumed that they had done something wrong and had them flogged as a matter of course. In those days it was considered that no one would tell the truth unless he was beaten. The accusation that Paul made of these magistrates who wanted him to depart quietly, shows that he appreciated the value of justice in court. (Acts 16:37.)

In England, Magna Charta was wrought from King John by the barons at Runnimede in 1215. Among other important grants, it provided, as follows:

> "No freeman shall be taken or imprisoned, or disseised, or outlawed, or exiled, or in any way destroyed . . . except by the legal judgment of his peers, or by the law of the land. To none will we sell, to none will we deny, or delay, right or justice."

This grant, which is the most famous, was a guarantee of security against arbitrary rule.

In 1632, Charles I yielded to

the demands of Parliament and agreed that he should not, without the consent of Parliament, allow persons to languish in prison without trial. However, subsequent kings found it hard to keep these promises.

In 1688, when the British people determined to put an end to the Stuart dynasty, Parliament prepared a "Declaration of Rights" which stipulated the conditions under which they were tendering the crown to William of Orange and Mary, his wife. The following year this statement of principles was written into the Bill of Rights.

Originally, in England an accused was denied the assistance of counsel in treason and felony cases, except as to points of law arising on the trial or in collateral matters. For the rest his interests were in the hands of the trial judge. At the same time parties in civil suits and persons accused of misdemeanors were entitled to the full assistance of counsel. After the revolution in 1688, the rule was abolished relative to treason, but it was otherwise steadily adhered to until 1836, when the full right was granted by Parliament in felony cases.

The rule of the right to the assistance of counsel in petty cases, and its denial in the case of serious crimes, where such assistance is most needed, was constantly, vigorously and sometimes passionately assailed. As early as 1758, Blackstone, although recognizing that the rule was settled at common law, denounced it as not in keeping with the rest of the humane treatment of prisoners by the English law. "For what face of reason," he said, "can that assistance be denied to save the life of a man, which yet is allowed him in prosecutions for every petty trespass?" (4 Blackstone Commentaries 355.) One of the grounds upon which Lord Coke defended the rule was that in felonies the court itself was counsel for the prisoner, that is, shall see that the proceedings against him are legal and strictly regular. (1 Cooley's Constitutional Limitations (8th Ed.) 698 et seq., and notes.) But how can a judge, whose functions are purely judicial, effectively discharge the obligations of counsel for the accused? He can and should see to it that in the proceedings before the court the accused shall be dealt with justly and fairly. He cannot, however, investigate the facts, advise and direct the defense, or participate in the necessary conferences between the accused and counsel.

In America, the rule was rejected. In at least twelve of the original thirteen colonies, the right to counsel was fully recognized in all criminal prosecutions, except that in one or two instances the right was limited to capital cases or the more serious crimes. Today, in the United States and in most states, it is the duty of the trial judge, where the accused is unable to employ counsel, to appoint counsel for him. In a large number of states the rule applies broadly to all criminal prosecutions, in others it is limited to the more serious crimes, and in a limited number to capital cases.

The practice in the Federal courts is derived from the Sixth Amendment to the Constitution of the United States. It provides, as follows:

"In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of Counsel for his defence."

Title 28 United States Code § 394, based upon the Act of September 24, 1789, provides, as follows:

"In all the courts of the United States the parties may plead and manage their own causes personally or by the assistance of such counsel or attorneys at law as, by the rules of the said courts, respectively, are permitted to manage and conduct causes therein."

Title 18 United States § 563, derived from the Act of April 30, 1790, provides, as follows:

"Every person who is indicted of treason or other capital crime, shall be allowed to make his full defense by counsel learned in the law, the court before which he is tried or some judge thereof, shall immediately upon his request, assign to him such counsel, not exceeding two, as he may desire, and they shall have free access to him at all seasonable hours."

These statutes are practically in the same form as when they were enacted 1789 and 1790. They provided merely for a right of representation in the Federal courts by the accused's own counsel and required the assignment of counsel by the court only on indictments for treason or other capital cases. There was little in the decisions of any court until Johnson v. Zerbst, 304 U. S. 458, in 1938, to indicate that the practice in the Federal courts, except in capital cases, required the appointment of counsel to assist the accused in his defense, as contrasted with the recognized right of the accused to be represented by counsel of his own if he so desired. In this case, the Sixth Amendment was held to require the appointment of counsel in any criminal case in the Federal court where the accused had no counsel and did not waive the assistance of counsel.

The view of the Supreme Court of the United States as to the practice best adapted to the needs of the Federal courts and most responsive to the requirements of the Federal Constitution and statutes as well as the decisions of the court is now stated in Rule 44 of the Federal Rules of Criminal Procedure

which became effective March 21, 1946. It provides, as follows:

"If the defendant appears in court without counsel, the court shall advise him of his right to counsel and assign counsel to represent him at every stage of the proceeding unless he elects to proceed without counsel or is able to obtain counsel."

It appears that there has been a gradual voluntary trend among the states toward the authorization by them of the appointment of counsel to assist the accused in his defense in all criminal prosecutions, with special consideration to the seriousness of the charge faced and to the actual needs of the accused under the circumstances of each case. Much of this trend has taken place since the adoption of the 14th Amendment in 1868. It is neither universal nor uniform.

For several years the Supreme Court of the United States has been flooded with petitions, particularly from Illinois, alleging that the applicant has been deprived of due process of law and other constitutional rights. Recognizing the importance to the administration of justice and to meet the situation, which was severely criticized in Marino v. Ragen, 332 U. S. 561, the Supreme Court of Illinois solicited suggestions from the Bar. At the request of the court, a committee consisting of members of the Illinois State and Chicago Bar Associations, met with the court and discussed the promulgation of a rule relative to the appointment of counsel. The committee drafted a proposed rule and submitted it to the court. At the May term a rule was adopted which became effective September 1, 1948. It provides, as follows:

"In all criminal cases wherein the accused upon conviction shall, or may, be punished by imprisonment in the penitentiary, if, at the time of his arraignment, the accused is not represented by counsel, the court shall, before receiving, entering, or allowing the change of any plea to an indictment, advise the accused he has a right to be defended by counsel. If he desires counsel, and states under oath he is unable to employ such counsel, the court shall appoint competent counsel to represent him. The court shall not permit waiver of counsel, or a plea of guilty, by any person accused of a crime for which upon conviction, the punishment may be imprisonment in the penitentiary, unless the court finds from proceedings had in open court that the accused understands the nature of the charge against him, and the consequences thereof if found guilty, and understands he has a right to counsel, and understandingly waives such right. The inquiries of the court, and the answers of the defendant to determine whether the accused understands his rights to be represented by counsel, and comprehends the nature of the crime with which he is charged, and the punishment thereof fixed by law, shall be recited in, and become part of the common law record in the case; provided, in no case shall a plea of guilty be received or accepted from a minor under the age of eighteen years, unless represented by counsel."

This rule is the first of its nature to be adopted by any state court. It is broader and more far reaching than the provisions of any constitution or statute, or the Federal rule.

The Problem of Family Desertion

by JACOB T. ZUKERMAN
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FOR OVER a century American sociologists, social workers and lawyers have been very much concerned with the problem of family desertion. Back in 1900 a special committee on desertion presented a very comprehensive report on the subject to the National Conference of Jewish Charities. And a year later a study of actual desertion cases was made here in the city of Boston. Even prior thereto there were kept, in many social agencies, records of families in which the husband had deserted. As a matter of fact, the problem is even older than America, for there are writings that show its existence even in the middle ages—as early as the 12th century.

So great did the problem become in the early 1900's that the private agencies of that day, which, at the time, provided all relief to indigent families, were considerably troubled by the incidence of family disruption; and in 1905, the United Hebrew Charities of New York established a separate department to deal exclusively with desertion cases. Sporadic and relatively unsuccessful attempts were made in various cities to study the problem, but it was not until the 1910 National Conference of Jewish Charities decided to form a national co-ordinating agency that the problem was handled on a country-wide basis. It was the creation of the National Desertion Bureau, at that time, that represented the first organized attempt of social agencies to meet the situation on a national scale. That an organization like the National Desertion Bureau was sorely needed is partly evidenced by its record of activity in over 50,000 situations; that it remains an important community resource in the location of missing family members and in providing casework and legal aid in domestic relations matters is established by the fact that this agency, a member organization of this association, was active in 1948 alone in 5,177 cases.

We know that the 5,000 or more cases handled annually by the National Desertion Bureau represent but a small part of the total number of deserted families in the United States. There are no complete figures for de-

sertions. Every lawyer knows that the statistics for divorces granted on the ground of desertion are generally unrealistic since they represent legal rather than actual causes. The only reasonable method we have of judging the approximate extent of the problem is through the figures of the Social Security Administration, which indicate that in June 1948, there were 449,154 families receiving aid to dependent children. Of these, 49.5% or about 222,750 families were those in which the father was absent from the home and not supporting the children. In these cases there were some 570,000 children and 222,750 mothers involved or a total of 792,750 individuals. In short, on aid to dependent children assistance *alone* there were almost 800,000 people receiving approximately $178,000,000 per year from state and nation. Add to that the undetermined figures for deserted wives, without children, who were receiving home relief, the unknown number of deserted women and children not receiving any type of public assistance, and the thousands of deserted children in institutions and under foster care, and it is safe enough to estimate that over 1,000,000 women and children are today the victims of family desertion.

Interesting, too, are the figures provided once again by the Social Security Administration which tell us that in a study made in 16 states for the period 1942–1948, there was an increase of 42% in the number of families in which the father was estranged. It is more than a coincidence that during the same period the caseload of the National Desertion Bureau rose from 3,746 to 5,177—an increase of 38.6%!

A classic example of the situation confronting many folks is that of the A family. After 10 years of anything but connubial bliss, Mr. A decides he can take it no longer and quietly steals in to the night, leaving Mrs. A and their three little A's without funds or source of income. Mrs. A applies to a public welfare agency which gives her assistance and refers her to the National Desertion Bureau for help in locating Mr. A. After some months of investigation, Mr. A is located—in another state where he is working as a laborer earning some $40 per week. What can be done?

It is possible to interview Mr. A, to discuss with him the advisability of returning to his family. But, if Mr. A refuses to talk the matter over, or having done so, remains adamant in his decision to live alone and like it, the next step is to try to get Mr. A to send some financial support. Again, if Mr. A declines to make an amicable arrangement, what else can be done?

It is legally possible, in many states, to secure an indictment for abandonment or non-sup-

ort. Possible, yes! But as a ractical matter, you and I know ow reluctant most prosecuting ttorneys are to ask for an in- ictment of, and how equally esitant grand juries are in in- icting family deserters . . . nd that even when the man is ndicted, how small is the chance f effecting an extradition. For here is the question of cost in- olved, with the extreme frugal- y practiced by most prosecu- ors when no one has been mur- ered or no property stolen; when nothing more than the wel- are of children is involved— when all that is destroyed is the ecurity of family life; when all hat is endangered is the future f a wife and children, left de- endent upon the community— which can well afford to provide ublic assistance and to pay the rice of delinquency but which, pparently, can ill afford the cost f returning a deserting father o his brood.

On the other hand, there is validity in the position taken by ome authorities that a recon- iliation effected on the basis of forced return is of little value and that all we succeed in doing in the case of extradition, is to uproot the husband from a new community, where he may have established himself and where he may be earning a fair liveli- hood, to return him to his home state, where he has no job and where it may be necessary to imprison him, adding to the bur- den of his home community. To be considered, also, is the psy- chological effect upon the mem- bers of a family whose head is treated as a criminal offender. Just think of the reactions of the children in such a family group, of the loss of self-respect which is often the result of a criminal trial; of the irreparable damage done to the relationship between parent and child, even in those situations in which there has been little affection previously shown by the erring father to his child. And it is fair enough to assume that any reconcilia- tion which results from a sus- pension of sentence is not likely to be a lasting and wholesome reunion. So that we find there remains much to be desired in the treatment of the non-sup- porter by criminal action—both in terms of practicability and ef- ficacy.

We do not suggest that we should remove from the books our criminal statutes concerning abandonment. By no means should we do that, for in some cases, resort to the authorative approach and to actual criminal enforcement may be the only ef- fective method. But we should not continue to place too much faith in criminal process as a means of effecting a cure.

LEGAL SECRETARY ASSOCIATIONS

By ALICE M. SCHNEIDER

San Francisco, California

"WHAT A DAY," exclaimed Attorney W. L. Girard, Deputy County Clerk of Long Beach, California, "Nothing but incorrectly prepared documents all day by 'purported legal secretaries.'" Eula Mae Smith (now Mrs. Jett of Long Beach), a young, inexperienced high school graduate on her first job, tearfully completed the papers as he impatiently paced the floor and said, "I have often wondered why you legal secretaries don't get together and find out just what is required in the preparation and filing of legal documents."

This suggestion of W. L. Girard stayed in Miss Smith's mind until the following week when she contacted five other legal secretaries and asked them to meet her one evening in a small restaurant on Ocean Boulevard in Long Beach for dinner and a discussion of the subject. She told them of her experience the previous week and asked them, "Why don't we form a club for the benefit of legal secretaries?" The girls went back to their offices with the idea, and with the encouragement and support of their employers the first legal secretary association became a reality the following September.

That was twenty years ago today, over one thousand legal secretaries are doing just what W. L. Girard, Deputy County Clerk, suggested to Eula Mae Smith that afternoon, and the State of California is polkadotted with 25 associations chartered under Articles of Incorporation filed in 1940, by Legal Secretaries, Incorporated, of California.

Last month at the regular dinner meetings of the various associations throughout the State of California, members learned from their respective Governors that at the last executive board meeting they had voted that they would resolve themselves into a committee for the purpose of forming a National Association of Legal Secretaries.

California State President Evelyn Atwood, of the Los Angeles Association, was appointed temporary chairman and proceeded with the first election of national executive officers. Those elected were: Louise B. Cord, San Diego Association

President; Marie D. Jeanerette, San Gabriel Valley Association, Vice-President; Attorney Velma Tougaw, Sacramento Association, Executive Secretary; and, Ruby Robbins, Ventura Association, Treasurer.

Mrs. Cord, the first national president of legal secretaries, is one of the original organizers of the California legal secretaries and a charter member of the San Diego Association. She was the first state president of the California Federation of Legal Secretaries, later incorporated under the name of Legal Secretaries, Incorporated. The first order of business presented to the National Association of Legal Secretaries was the adoption of a Code of Ethics patterned after that of the California group. This action culminates twenty years of work toward national expansion.

In addition to the membership of over one thousand in the State of California, preliminary work has also been completed in Iowa, Illinois, Arizona and Tennessee by the national vice-president, who for many years has been out-of-state membership chairman of the California group. Work is also in progress toward forming legal secretarial associations in Pennsylvania, Colorado, Michigan, Texas, Oklahoma, Washington, Oregon, Florida, Ohio, New Mexico, Massachusetts and Minnesota.

Inquiries, regarding formation of new associations in California, may be addressed to Molly Poole (state vice-president), 431 Brix Building, Fresno, California. Information for other states may be obtained by writing Marie D. Jeanerette (national vice-president), 16 Paloma Street, Pasadena 7, California.

"The Busy Lawyer"

BY THE PATIENT SECRETARY

As he rushes into the office and slams the door,
I sometimes wonder what the important case can be,
For he hurriedly reads the morning mail with speed,
And leaves without any explanation I might need.
I often debate on what to tell some of his clients,
When the telephone rings and they ask for him,
But instead I say, "I'm very sorry, he isn't in,
He's in the Court House and will be back by ten."
No doubt if I only possessed a magic crystal ball,
All my troubles and worries would probably be o'er,
I'll bet he's with the boys down in the drugstore,
Discussing politics and the latest football score.
Oh, no, I'm not complaining about his strange ideas,
It's just that little white lie I repeat every day,
I wonder if old St. Peter won't look at me and say,
"Sorry, lady, no legal stenographers up this way!"

An Early Bucks County, Pa., Will

Will Book 21, Page 51

Contributed by
R. M. ACHEY of the Doylestown, Pa., Bar

"WHAT thy hands find to do, do quickly, for in the grave, there is no labor, and no device."—Solomon.

"Love those who hate, and pray for those who despitefully use and persecute you."—A greater than Solomon.

"How can ye hope to escape the damnation of Hell?"

A voice from isolation
To save from "Hells damnation"
This rotten organization
Called Christian civilization

Isolation Damnation Cooperation Salvation. Know all men (and consequently all women) by these presence that I ..... of Upper Makefield Township County Bucks and State of Pennsylvania Farmer (alias the Devil) as per that far seeing and discerning (like the rest of her sex) "gal" of Newton, County Bucks and state of Pennsylvania, being of unsound body, but of sound and disposing mind and memory the opinion of some of the damn fools and blind of this rotten organization to the contrary notwithstanding do make and publish this my last will and testament hereby revoking all former wills, by me at any time heretofore made. And as to my earthly estate, and all the property, real personal, or mixed, of which I shall die, seized and possessed, or to which I shall be entitled at the time of my decease I devise, bequeath and dispose of in the manner following, to wit.

1st. My will is that my body shall be born to the grave in my carriage drawn by my young Stallions Fred and Charlie who brought about my premature death by not being thoroughly broken, and that ..... drive them, that I be laid in the Stove grave yard near Yardleyville, by the side of my colored brother ....., in a plain coffin, and dressed in Striped blue shirt and linen trousers, and further the old Stallion Jesus, shall go as chief mourner, ridden by my friend carrying the Mysterious Banner representing the four races, in the faces of Henry W. Longfellow of Boston, Ely Brown of Richmond, Spotted Dog of the Cheyenne tribe, and Loo Choo of California, and that they each be paid ten dollars by my executor for said service.

2nd. My will is that all my personal property with the exception of certain articles and live stock hereinafter named, shall be sold at public sale to the highest bidder for cash, by my executors hereinafter named, as soon after my decease as possible and all my just debt paid.

Item. I give, devise and bequeath to my friend, and the friend of man ..... of Williamsburg Franklin Co. Kansas my two young Stallions Fred and Charlie and the sett of double Harness made for them and the cupboard, I direct my executor to forward them to him by the safest and most expeditions rout at my espense.

I give to ..... the Stallion Jesus and one hundred dollars a year for three years to keep him to be paid him yearly by my executor with directions he is not to drive him nor have him driven off the farm nor use him at hard work, at the end of three years, if still living he shall put him out of the way in as merciful a way as possible and bury him decently.

I give to my cousins ..... and ..... the bull mud drop (so called from being dropped in the mud) now in their possession, on condition they keep him two years from the first of first month Eighteen hundred and Seventy-six.

I give to my friend of other happier days ..... of Philadelphia the sett of Cottage furniture complete in the room I occupy on the Taylor farm in lieu of the mare Emma. I give the feathered tribe consisting of giuneas to those on whose premises they are.

I give to my friend ....'s wife my carriage that is being fitted up at Taylorsville that is to carry me to "the house that was built for me before I was born" I give to my brother ..... the handsaw presented me by H..... in .....'s care and also the fifty dollars in his possession, with directions that he pay cousin ..... thirty dollars due her, the balance he can retain in memory of me. I give to my sister ..... and ..... all the dry goods in my possession and fifty dollars each to be paid them by my executor.

I give to my friend ..... my government Saddle, and the bridle given me by my sister ..... and to ....., ..., ..., and ..... the sum of five dollars each to be paid them by my executor. I give to my executor the sum of one hundred dollars to be invested in a government bond of that amount and publicly burned in the streets of Newtown with advice to those "clothed in purple and fine linen, and fairing sumptuously every day" "to go and do likewise" All the rest and residue of my estate real personal and mixed of which I shall die seized and possessed or to which I shall be entitled at my decease I give devise and bequeath to my friend ..... and my Broth-

er ..... share and share alike. I request my executor to have this my last will and testament published in friend chirch's paper The Newtown Enterprise forgiving him for a lack of moral courage and truthfulness on a former occasion and that he send a copy of the paper to my friend ..... of Williamsburg Franklin Co. Kansas and lastly I do nominate and appoint my friend ..... of Newtown as my sole executor of this my last will and testament In testimony whereof I the said ..... have to this my last will and testament subscribed my name and affixed my seal on the day I complete my sixtieth year this twenty seventh day of tenth month in the year of Jesus of Nazareth one thousand eight-hundred and seventy five and of Jesus of Isolation twenty-eight.

..... (SEAL)

Signed, sealed, published and declared by the said ..... as and for his last Will and Testament in the presence of us who at his request and in his presence and in the presence of each other have published our names as witnesses thereto.

.....

.....

Hymn to La Salle Street and Henry, Esq.

(*Looking South*)

HUGO SONNENSCHEIN, JR.
Associate Editor -:- Chicago Bar Record

This above all—to your own interest rate be true
And it must follow, as the night the day
You'll get your mortgage through the F.H.A.
(Be sure you've got a client who can pay!)

Bear this in mind, foreclosures are on the rise—
Those equities in your deposit box
Won't equal a scintilla of Fort Knox
(Or keep your firm from going on the rocks!)

By this same token, Henry, *re* your fees:
No creditor should ever take his ease
Put on the pressure when the going's good
The lawyer's bill is seldom understood

Far called our monies melt away
At Arlington and Hawthorne sinks the fire;
And all the fees of yesterday
Can't beat some ancient pony to the wire!

Fame is the spur the legal spirit does raise
To seek delight in strenuous days;
I'd like a judgeship tailored to my size
But, Henry, money comes in other ways—

Guardians and Masters litter up the street
Republicans are rushing to the county
A paying city job is quite a feat—
There ain't no mutiny on the public bounty!

So legal eagles rush with noisy feet
Where even Arvey's angels fear to tred
It's true that many lawyers have to eat
Enlighten me—how is the *client* fed?

Henry, I look upon the Board of Trade
Preferably I should be selling oats and rye—
The best planned fees are frequently mislaid
For margins I could kiss this game good-bye!

Ceres, Goddess of the Grain, gaze on this street of sorrow;
The chasers strive with might and main, to build a rich tomorrow,
Far from the fields of waving corn a personal injury case is born!

O Goddess standing with the sheaves you'll never see a farm
The furrows that the lawyer leaves won't keep a seedling warm,
For as the bustling barrister knows, he rarely can eat what he never sows!

When Humor Failed

Bob Benchley, the late motion picture humorist, is already a legend at Harvard University, which graduated him in 1912. One of his claims to immortality lies in the incident which professors still tell each year to new classes. It seems that Benchley, who was taking a course in International Law, was called upon in the examination to discuss certain violations of cod-fishing rights. Admitting that he knew nothing of the legal problems involved, Benchley went on to protest, "But I think the poor cod has had a pretty raw deal!" and then continued his examination with an impassioned essay on behalf of the poor, misunderstood cod.

He was "flunked."

Contributed by: Armand A. Korzenik
Cambridge 38, Mass.

Legal Definition of Centaurian

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Opinion of

JUDGE FRANCIS X. GIACCONE

Supreme Court, Brooklyn, New York

THE approval of a certificate of incorporation of a membership organization, when there is no objection, is ordinarily a matter of routine and would require no opinion. However, the title of the proposed association, THE CENTAURIAN CLUB OF BROOKLYN, stands out in a pile of papers and arrests one's attention as would a monster in Times Square with a body half man and half horse, for that is what a centaur is, whenever he is, or whenever he was, or if he ever was, even if it was only in the weird imagination of poets and artists, or of simple superstitious people. Who would want to assume that kind of label and for what unearthly reason would they want to organize? An invasion of centaurians might be not less to be feared than an invasion of Martians. These mythical descendants of Ixion were conceived as wild and coarse, their animal nature being shown by their body, half horse and half man. They come to us through the ancient Greek and Roman poets in deeds of violence. Stesichorus' description of their drunken brawl with Heracles and the story of their fight with the Lapithae at the marriage feast of Perithous, are characteristic of the role which tradition and fable have assigned to them. Dante makes them demons and, as such, the fit custodians of those condemned to eternal damnation in the seventh circle of the Inferno because of their violent lives on earth. Even Shakespeare could not resist resorting to the centaurs to conjure up a vision of ruthless savagery when he has Titus Andronicus cry out in his fury that the banquet

> ". . . may prove
> More stern and bloody than
> the centaurs' feast."

The sole exception of Chiron, the master of Achilles, does not alter the character of that devilish brood. The centaurs may have been a mere backward people and the victims of the teratogenic xenophobia of their neighbors, but they lacked the poet to sing their praise.

It does not clarify matters, but it deepens the mystery indeed, to find that centaurs are listed in

Roget's Thesaurus under the heading of "Unconformity," and are placed in the weird and fantastic company of "phoenix, chimera, hydra, sphinx, minotaur, griffin, hippogriff, sagittary, kraken, cockatrice, wyvern, roc, liver, dragon, sea-serpent, mermaid, unicorn, cyclops," an horendous assortment except possibly for the mermaid and they are reputed to be not exactly respectable company, which would be a serious hindrance in an application of this kind.

I have carefully read the petition and I find the purposes to be entirely praiseworthy. It seems obvious that the applicants, evidently respectable members of the community, are trying to associate for the common good. The adoption of the terrifying appelative is a mere escape into the realm of fantasy, the outward projection of repression, the extravagance of decency. As psychologists would tell us, it is something that good people, who behave properly, like to do sometimes. Then, again, it may be just an American weakness for titles, even though they may be mystifying and startling, providing they be grandiloquent. More than any other place in creation, that is why we have more organizations in the United States with such high-sounding titles for their officers, wafting a mere pen-pusher or a tired mechanic into the realm of the Arabian Nights.

The purpose of the proposed organization is generally to foster interest and promote educational, civic, patriotic and social work in the community, all of which is very laudable, but it can really be done so well under a much simpler name. However, as Shakespeare observed in substance with reference to Romeo and the rose and the name, it is the essence that counts and not the label. The certificate is therefore approved.

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New England Justice

Rogues are almost the only game the people of New Hampshire have to pursue, and they are by no means backward in the chase. Pettingill v. Rideout, 6 N. H. 454, 25 Am. Dec. 473, per Richardson, C.J.

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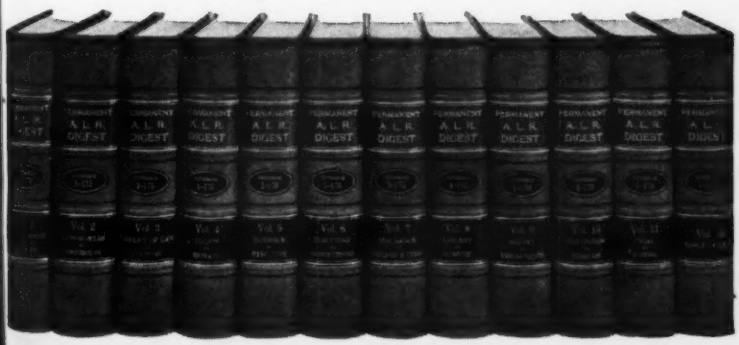

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